



## **Agricultural Marketing Service**

### **7 CFR Part 993**

[Doc. No. AMS-SC-20-0104; SC21-993-1 FR]

## **Dried Prunes Produced in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Prune Marketing Committee to increase the assessment rate established for the 2020-21 and subsequent crop years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Bianca Bertrand, Management and Program Analyst, or Gary D. Olson, Acting Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559)487-5901 or email: BiancaM.Bertrand@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington,

DC 20250-0237; Telephone: (202) 720-2491, or Email:

Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 993, as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. Part 993 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Prune Marketing Committee (Committee) locally administers the Order and is comprised of producers and handlers of dried prunes operating within the production area, and a public member. The crop year for this Order runs from August 1 to July 31.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and

promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. Agricultural Marketing Service (AMS) has determined that this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. The assessment rate is applicable to all assessable dried prunes for the 2020-21 crop year and would continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in

connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such a handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from \$0.25 per ton of salable dried prunes, the rate that was established for the 2019-20 and subsequent crop years, to \$0.28 per ton of salable dried prunes for the 2020-21 and subsequent crop years.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee's needs and with the cost of goods and services in their local area and can formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. All directly affected persons have an opportunity to participate and provide input.

For the 2019-20 and subsequent crop years, the Committee recommended, and USDA approved, an assessment

rate of \$0.25 per ton of salable dried prunes. That assessment rate continues in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 10, 2020, and unanimously recommended expenditures of \$24,550 and an assessment rate of \$0.28 per ton of salable dried prunes handled for the 2020-21 and subsequent crop years. In comparison, last year's budgeted expenditures were \$24,500. The \$0.28 per ton assessment rate is \$0.03 higher than the rate currently in effect. The Committee recommended increasing the assessment rate due to a smaller crop, and to provide adequate income along with carryforward/contingency funds and interest income to cover all the Committee's budgeted expenses for the 2020-21 crop year.

Major expenditures recommended by the Committee for the 2020-21 crop year include \$13,700 for personnel expenses and \$10,850 for operating expenses. Budgeted expenses for these items for the 2019-20 crop year were \$13,300 and \$11,200, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses and an estimated crop of 50,000 tons of salable dried prunes. Income derived from handler assessments, calculated at \$14,000 (50,000

tons salable dried prunes multiplied by \$0.28 assessment rate), along with carryforward/contingency funds and interest income (\$11,682), will be adequate to cover budgeted expenses of \$24,550.

The assessment rate established by this rule will continue in effect indefinitely until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2020-21 crop year budget, and those for subsequent crop years, will be reviewed and, as appropriate, approved by USDA.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has

considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of dried prunes in the production area and 20 handlers subject to the regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for California dried prunes for the 2019-20 crop year was \$1,510 per ton. Committee data indicates that the California dried prune total production was 110,000 tons in the 2019-20 crop year. The total 2019-20 crop year value of California dried prunes was \$166,100,000 (110,000 tons times \$1,510 per ton equals \$166,100,000). Dividing the

crop value by the estimated number of producers (800) yields an estimated average receipt per producer of \$207,625.

According to USDA Market News data, the reported terminal price for 2019 for California dried prunes ranged between \$30.02 to \$32.59 per 28-pound carton. The average of this range is \$31.31 ( $\$30.02 + \$32.59$  divided by 2 equals \$31.31). Dividing the average value by the 28-pound carton yields an estimated average price per pound of \$1.12 ( $\$31.31$  average value for 28-pound carton divided by 28).

The handler price for prunes is \$2,240 per ton ( $\$1.12$  per pound multiplied by 2,000 pounds per ton equals \$2,240 per ton). Multiplying 2019-20 California dried prune total production of 110,000 tons by the estimated average price per ton of \$2,240 equals \$246,400,000. Dividing this figure by 20 regulated handlers yields estimated average annual handler receipts of \$12,320,000. Therefore, using the above data, the majority of producers and handlers of California dried prunes may be classified as small entities.

As noted above, the average price received per ton by producers in the preceding crop year was \$1,510 per ton of salable dried prunes. Given the estimated tonnage of 50,000 tons salable dried prunes for the 2020-21 crop year, the total producer revenue is estimated to be \$75,500,000. The total assessment revenue is expected to be \$14,000



(50,000 tons multiplied by \$0.28 per ton). Thus, the total assessment revenue compared to total producer revenue is 0.019 percent.

This final rule increases the assessment rate collected from handlers for the 2020-21 and subsequent crop years from \$0.25 to \$0.28 per ton of salable California dried prunes. The Committee unanimously recommended 2020-21 crop year expenditures of \$24,550 and an assessment rate of \$0.28 per ton of salable dried prunes. The \$0.28 per ton assessment rate is \$0.03 higher than the current rate. The volume of assessable dried prunes for the 2020-21 crop year is estimated to be 50,000 tons. Thus, the \$0.28 per ton of salable dried prunes should provide \$14,000 in assessment income (50,000 multiplied by \$0.28). Income derived from handler assessments, along with carryforward/contingency funds and interest income, will be adequate to cover budgeted expenses for the 2020-21 crop year.

Major expenditures recommended by the Committee for the 2020-21 crop year include \$13,700 for personnel expenses and \$10,850 for operating expenses. Budgeted expenses for these items in the 2019-20 crop year were \$13,300 and \$11,200 respectively.

The Committee recommended increasing the assessment rate due to a smaller crop and to provide adequate income, along with carryforward/contingency funds and interest

income, to cover the Committee's budgeted expenses for the 2020-21 crop year. Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.25 per ton of salable dried prunes, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate, along with carryforward/contingency funds and interest income, will adequately fund budgeted expenses.

This final rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the California prune industry. Meetings are public and virtual or in a hybrid style with participants having a choice whether to attend in person or virtually. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues.

The December 10, 2020, meeting was a virtual public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on the proposed

rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this final rule. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large California prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on May 12, 2021 (86 FR 25975). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made

available through the internet by USDA and **Federal Register**. A 30-day comment period ending June 11, 2021, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 993**

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

#### **PART 993 – DRIED PRUNES PRODUCED IN CALIFORNIA.**

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 993.347 is revised to read as follows:

**§ 993.347 Assessment rate.**

On and after August 1, 2020, an assessment rate of \$0.28 per ton of salable dried prunes is established for California dried prunes.

Erin Morris, Associate Administrator,  
Agricultural Marketing Service.

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